

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Petition of USTelecom For Forbearance |) | WC Docket No. 12-61 |
| Under 47 U.S.C. § 160(c) From Enforcement |) | |
| Of Certain Legacy Telecommunications |) | |
| Regulations |) | |

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES,
MAINE OFFICE OF THE PUBLIC ADVOCATE, AND
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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April 9, 2012

TABLE OF CONTENTS

| | |
|--|----|
| SUMMARY | ii |
| I. INTRODUCTION | 3 |
| A. The USTelecom Forbearance Petition | 4 |
| B. Interest of NASUCA, Public Advocate, and Rate Counsel | 5 |
| C. The USTelecom Petition is incomplete and should be dismissed | 6 |
| II. FRAMEWORK FOR REVIEWING FORBEARANCE PETITIONS..... | 7 |
| III. MIGRATION TO IP NETWORK | 10 |
| IV. COMPETITION | 12 |
| A. USTelecom’s analysis is flawed. | 12 |
| B. USTelecom exaggerates the role of wireless service in disciplining the rates, terms, and conditions of basic local exchange service. | 13 |
| C. The undeniable entry by cable companies into telecommunications markets has led to, at best, a duopoly, which does not represent effective competition, and, also, cable companies do not offer economic substitutes for stand-alone basic local service..... | 16 |
| V. RELEVANCE OF REPORTS AND REGULATIONS TO FEDERAL AND STATE REGULATORY OVERSIGHT | 20 |
| A. Background | 20 |
| B. Evidence of relevance of reports..... | 20 |
| 1. USTelecom has failed to demonstrate that the reports are irrelevant. | 20 |
| 2. Rules governing notices of network changes and service discontinuance approval requirements..... | 22 |
| 3. Prepaid calling card reporting requirements..... | 23 |
| 4. States rely on the reports that would be discontinued if the FCC granted USTelecom’s Petition. | 23 |
| 5. Price cap regulation does not render reporting irrelevant..... | 27 |
| 6. Basic and Continuing Property Requirements..... | 30 |
| VI. CONCLUSION | 31 |

SUMMARY

The National Association of State Utility Consumer Advocates (“NASUCA”), the Maine Office of the Public Advocate (“Public Advocate”), and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, “Consumer Advocates”) oppose the petition filed by the United States Telecom Association (“USTelecom”) for forbearance from a broad-ranging collection of regulations, including, for example, the use by incumbent local exchange carriers (“ILEC”) of the “Part 32” Uniform System of Accounts (the recording of expenses, investment and revenues among various cost accounting categories); various cost assignment rules (e.g., “Part 36” (jurisdictional separations) rules, “Part 64” rules (apportionment of costs and revenues between regulated and non-regulated services), and “Part 69” rules (used to develop interstate prices based upon the interstate access rate structure); basic and continuing property record requirements and recordkeeping requirements; Automated Reporting Management Information System (“ARMIS”) Report 43-01 (a financial report); rules concerning notices of network changes; service discontinuance approval requirements; prepaid calling card reporting requirements; and various other FCC requirements. USTelecom has exaggerated the extent to which competition has developed in relevant markets, failed to provide empirical evidence that corresponds with the specific companies that the Petition encompasses, and failed to demonstrate that granting its request for forbearance is in the public interest. Consumer Advocates urge the FCC to deny the Petition.

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) as an organization,¹ and NASUCA members the Maine Office of the Public Advocate (“Public Advocate”)² and the New Jersey Division of Rate Counsel (“Rate Counsel”) as an agency representing New Jersey consumers³ (collectively, “Consumer Advocates”) hereby submit

¹ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

² The Maine Public Advocate represents all consumers of utility services in Maine, pursuant to 35-A M.R.S.A. Section 1702. The Public Advocate and staff take actions to ensure that Maine's utility customers have affordable, high quality utility services. Under Section 1702(5) of the Maine statutes, the Public Advocate may appear on behalf of utility ratepayers in “proceedings before state and federal agencies... in which the subject matter of the action affects the customers of any utility doing business in the State.....”

³ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel, formerly known

comments in opposition to the petition for forbearance filed by the United States Telecom Association (“USTelecom Petition” or “Petition”) that was docketed in this proceeding.

A. The USTelecom Forbearance Petition

On February 16, 2012, USTelecom filed a petition with the Federal Communications Commission (“FCC” or “Commission”) asking that the FCC forbear from enforcing certain telecommunications regulations pursuant to section 10 of the Telecommunications Act of 1996 (“1996 Act”).⁴ The Petition would affect a broad-ranging collection of regulations, including, for example, the use by incumbent local exchange carriers (“ILEC”) of the “Part 32” Uniform System of Accounts (the recording of expenses, investment and revenues among various cost accounting categories); various cost assignment rules (e.g., “Part 36” (jurisdictional separations) rules, “Part 64” rules (apportionment of costs and revenues between regulated and non-regulated services), and “Part 69” rules (used to develop interstate prices based upon the interstate access rate structure); basic and continuing property record requirements and recordkeeping requirements; Automated Reporting Management Information System (“ARMIS”) Report 43-01 (a financial report); rules concerning notices of network changes; service discontinuance approval requirements; prepaid calling card reporting requirements; and various other FCC requirements. The FCC’s Public Notice seeking comment groups USTA’s various forbearance requests within seventeen categories.⁵ Subsequently, the FCC issued a public notice on a request on behalf of various carriers for waivers of the rules from which US Telecom seeks forbearance,

as the New Jersey Ratepayer Advocate, is in, but not of, the New Jersey Department of Treasury. *N.J.S.A.* §§ 52:27EE-46 *et seq.*

⁴ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, filed February 16, 2012 (“USTelecom Petition” or “Petition”).

⁵ See FCC Public Notice, “Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations,” WC Docket No. 12-61, DA 12-352, March 8, 2012. The specific regulations from which USTelecom seeks relief are detailed in Appendix A of the Petition.

which undermines the relief requested by US Telecom.⁶

B. Interest of NASUCA, Public Advocate, and Rate Counsel

Consumer Advocates urge the FCC to reject the flawed USTelecom Petition because it is adverse to the public interest, would eliminate essential regulatory tools, and lacks market-specific empirical evidence. Granting the Petition would harm consumers because consumer advocates and regulators would lack the requisite information to participate effectively in state and federal regulatory proceedings that concern a wide range of issues, such as the impact of switched access charges on carriers' local rates, the need for and size of state universal service funds, and the determination of appropriate inputs and assumptions for the cost models that will be used to quantify federal broadband service support.

Consumer Advocates have participated previously in numerous proceedings concerning various carriers' petitions for forbearance. Consumer Advocates refer the Commission to and incorporate by reference their initial and reply comments filed on numerous prior forbearance petitions, because many of the arguments regarding those petitions continue to be germane to the Commission's investigation of USTelecom's Petition for forbearance.⁷ This is because the

⁶ FCC Public Notice DA 12-525, released April 2, 2012, "Wireline Competition Bureau Seeks Comment on the Petition of the FairPoint Cost Companies for Conversion of their Special Access Services to Price Cap Regulation and for Limited Waiver Relief," WC Docket No. 12-71.

⁷ See, e.g., *See, e.g., Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Philadelphia, Pittsburgh, Boston, New York City, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Dockets 06-172 and 07-97, Comments and Reply Comments of the National Association of State Utility Consumer Advocates on Remand, September 21, 2009 and October 21, 2009; *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Initial and Reply Comments of the New Jersey Division of Rate Counsel and NASUCA, March 7, 2008 and March 24, 2008; *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas*, WC Docket 07-97, Initial and Reply Comments of the New Jersey Division of Rate Counsel, August 31, 2007 and September 28, 2007; Initial and Reply Comments of NASUCA, August 31, 2007 and October 1, 2007; *Petition of Qwest Corporation For Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, New Jersey Division of Rate Counsel, Public Counsel Section of the Washington State Attorney General's Office and NASUCA, Initial and Reply Comments, December 6, 2007 and December 21, 2007; *In the Matter of Petition of AT&T Inc.*, for

ILECs have consistently overstated of the extent of competition in their markets and equally consistently have underestimated the negative impact on the public interest of eliminating the regulations from which the Petitioners seek forbearance.

C. The USTelecom Petition is incomplete and should be dismissed

The USTelecom Petition is incomplete because it fails to identify the specific companies that would be encompassed by the sweeping request for forbearance, and, moreover, fails to provide evidence that is specific to each of these individual companies. Although Section 10 provides for forbearance with respect to a “class” of carriers or of services, USTelecom’s Petition is so broadbrush and lacking empirical evidence that it fails the public interest test.⁸ Individual companies have not signed on to the Petition, and, more importantly, have not provided empirical evidence relevant to their operations (such as whether they are a price cap or rate of return carrier, whether they are publicly traded, and the like). There should also be detailed information that goes to the elements of the forbearance standard, on a company-specific basis (e.g., including specific evidence on competition in their respective geographic and product markets). Absent such information, there is not a sufficient foundation to enable Consumer Advocates and the FCC to address the merits of the request for forbearance. Because the Petition is procedurally flawed and clearly inconsistent with the public interest, Consumer Advocates strongly urge the FCC to dismiss the Petition immediately. If, contrary to Consumer Advocates’ recommendation, the FCC intends to consider USTelecom’s Petition as filed,

Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements, WC Docket No. 07-139, New Jersey Division of Rate Counsel, Initial and Reply Comments, August 20, 2007 and September 19, 2007; *NASUCA, Initial and Reply Comments*, August 20, 2007 and September 19, 2007; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules*, WC Docket No. 05-342, New Jersey Division of the Ratepayer Advocate, Initial and Reply Comments, January 23, 2006 and February 10, 2006; *NASUCA, Reply Comments*, February 13, 2006; *Qwest’s Petition for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules as They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Comments of the New Jersey Division of the Ratepayer Advocate, January 23, 2006.

⁸ 47 U.S.C. § 160(a)(3).

Consumer Advocates urge the FCC to reject the Petition for the reasons set forth in these comments. Despite these serious misgivings about the fundamentally inappropriate manner in which USTelecom has filed its Petition, Consumer Advocates provide a preliminary assessment of the Petition in these initial comments.

II. FRAMEWORK FOR REVIEWING FORBEARANCE PETITIONS

USTelecom asserts that for each of the component forbearance requests included in its Petition, all three statutory requirements for forbearance set forth in Section 10(a) of the 1996 Act are satisfied.⁹ Section 10(a) provides:

[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or a telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that:

- 1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- 2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- 3) forbearance from applying such provision or regulation is consistent with the public interest.¹⁰

In applying Section 10, the Commission has stated that it “is obligated to forbear under section 10(a) only if all three elements of the forbearance criteria are satisfied. Thus, the Commission ‘could properly deny a petition for forbearance if it finds that any one of the three

⁹ USTelecom Petition, at 8-9.

¹⁰ 47 U.S.C. § 160(a).

prongs is unsatisfied.”¹¹ In addition, the Commission must be guided by Section 10(b), which directs the Commission, in determining whether forbearance is in the public interest, to “consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹²

As the FCC has applied the forbearance standard – and repeatedly reviewed filings that fell short of meeting the evidentiary burden – it has clarified and refined its interpretation. In 2010, the FCC released its order denying the petition of Qwest Corporation (“Qwest”) for forbearance from providing unbundled network elements (“UNEs”) in the Phoenix Metropolitan Statistical Area.¹³ Simultaneously, the Commission issued a Public Notice seeking “comment on the application of the analytical framework used in the *Qwest Phoenix Forbearance Order* to other, similar requests for regulatory relief, including the pending remands of the *Verizon 6 MSA Forbearance Order* (WC Docket No. 06-172) and the *Qwest 4 MSA Forbearance Order* (WC Docket No. 07-97).”¹⁴ Verizon and Qwest each withdrew their petitions for forbearance. As the Commission has made clear in these earlier cases, those seeking forbearance bear the burden of production and the burden of proof with respect to all of the Section 10 criteria. The present USTelecom Petition clearly fails to meet this standard.

¹¹ 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. December 5, 2007) (“*Verizon Six MSA Order*”), at para. 20, quoting *Cellular Telecommunications & Internet Assoc. v. Federal Communications Commission*, 330 F.3d 502, 509 (D.C. Cir. 2003). See also *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14125, para. 12 (2007).

¹² 47 U.S.C. §160(b).

¹³ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113 (rel. June 22, 2010) (“*Qwest Phoenix Forbearance Order*”).

¹⁴ Public Notice, “Wireline Competition Bureau Seeks Comment on Applying the *Qwest Phoenix Forbearance Order* Analytic Framework in Similar Proceedings,” WC Docket Nos. 06-172, 07-97, DA 10-1115, June 22, 2010 (“Public Notice”).

In addition to the substantive framework specified in Section 10, as interpreted and applied in the Commission's Orders, there is a procedural framework for handling forbearance petitions. Under Section 10(c), the FCC is permitted one year to act on any forbearance petition; if it has not acted within that timeframe, the petition is "deemed granted." Also, the FCC may extend the period to act for 90 days subject to making certain findings.

This constraint can place a significant burden on the Commission and on parties responding to the forbearance petition. After more than a decade dealing with Section 10 petitions, the FCC, in 2009, adopted the *Forbearance Procedures Order*, which set forth new rules for considering forbearance petitions.¹⁵ The rules include a "complete as filed" requirement, "consistent with the principle that whenever a petitioner files a petition for forbearance, the petitioner bears the burden of proof with respect to establishing that the statutory criteria for forbearance are met."¹⁶ Petitioners may not withdraw or "significantly narrow" a petition after the tenth day following reply comments without FCC authorization.¹⁷ The FCC describes its new procedures as ensuring that forbearance petitions are "addressed in a timely, equitable and predictable manner" and that review will be "frontloaded, actively managed, transparent, and fair."¹⁸ The Forbearance Procedures Order also sets out standards regarding initial FCC Bureau review and summary denial and procedures for public notice.¹⁹

¹⁵ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56, released June 29, 2009 ("Forbearance Procedures Order"). Most of the new rules became effective on September 8, 2009 (the new rule 1.54, "Petitions for forbearance must be complete as filed," which required approval of the Office of Management and Budget, took effect later). Public Notice, "Notice of Effective Date of New Forbearance Rules," WC Docket No. 07-267, DA 09-1852, August 24, 2009.

¹⁶ Forbearance Procedures Order, at para. 1. See, also, *id.*, at para. 20 for the FCC's reasoning that the Petitioner bears the burden of proof. The FCC states that the burden of proof includes both "burden of production" and "burden of persuasion." *Id.*, at para. 21.

¹⁷ *Id.*, at para. 35.

¹⁸ *Id.*, at para. 1.

¹⁹ *Id.*, at paras. 28-29.

USTelecom is seeking forbearance on behalf of all incumbent local exchange carriers (“ILECs”) and, in some instances, on behalf of all price cap carriers, although not the regional Bell operating companies.²⁰ However, no carriers have specifically signed on to the Petition.

While Section 10 permits the FCC to grant forbearance to a “class” of carriers or of services, the Petition is deficient because clearly elements of the forbearance standard need to be addressed with carrier-specific and market-specific information. The FCC, therefore, should deny the Petition because it lacks company-specific data that is germane to relevant geographic and product markets.

III. MIGRATION TO IP NETWORK

According to USTelecom, because the telecommunications industry is in the process of transitioning to Internet-Protocol (“IP”)-based networks (in USTelecom’s view, moving away from the Public Switched Telephone Network (“PSTN”)), the Commission’s rules are outdated and do not “address the challenges associated with broadband networks.”²¹ Although it asserts this position throughout its petition, USTelecom has failed to demonstrate with any factual support that the regulations from which it seeks forbearance “are antithetical to the deployment of broadband.”²² Crucially, it has not produced evidence showing the forbearance previously granted by the FCC to some carriers with respect to certain regulations has directly resulted in greater broadband deployment than otherwise would have occurred. Soundly managed companies make their investment decisions – including those concerning when and where to deploy broadband – based on their projections of the revenues and expenses associated with such

²⁰ See USTelecom Petition, at Appendix A.

²¹ USTelecom Petition, at i.

²² *Id.*, at 2.

investment. USTelecom has failed to demonstrate how granting its Petition would significantly and specifically alter companies' cost-benefit analyses undertaken for the purpose of making capital investment decisions. Although, of course it is likely that companies will save *some* money by avoiding the need to comply with particular regulations, USTelecom's vague assertion to this effect does not substitute for a rigorous cost/benefit analysis. Rather than granting USTelecom's poorly justified Petition in order to achieve its broadband goals, the FCC should instead rely on its policy and decisions in its "Connect America Fund" Order, which establishes incentives and a blueprint for achieving broadband deployment.²³

Furthermore, the technological platform that companies and consumers use for telecommunications services does not alter an analysis of the status of competition in the markets that the companies serve. Whether they are using IP or traditional technology, ILECs continue to dominate relevant markets, and therefore the numerous requirements from which USTelecom seeks forbearance continue to be important to protect consumers from ILECs' exercise of their market power. The technology that ILECs use to serve customers does not alter their dominance of the market. Furthermore, ILECs have made many promises over the years that, in exchange for deregulation, they will invest and innovate more than they otherwise but there is no evidence that this "extra" investment and innovation has in fact occurred.

²³ *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011 ("CAF Order and FNPRM"). A number of parties, including NASUCA, have appealed the Order. Those appeals have been consolidated in the 10th Circuit Court of Appeals under *In re: FCC 11-161* as No. 11-9900.

IV. COMPETITION

A. USTelecom's analysis is flawed.

USTelecom makes several points relating to the purported level of competition that exists and relating to companies' ability to compete. According to USTelecom, the FCC's reasoning for its granting of forbearance for various requirements for Bell operating companies ("BOC") similarly applies to many aspects of USTelecom's Petition.²⁴ USTelecom also contends that there has been an "explosion of competition"²⁵ and that "competition constrains the rates that ILECs can charge for their services,"²⁶ rendering the regulations unnecessary.

Consumer Advocates respectfully disagree with the FCC's granting of forbearance to BOCs and therefore are not persuaded that providing comparable relief to USTelecom is in the public interest. Consumer Advocates also disagree with US Telecom's competitive analysis and conclusions. US Telecom's competition analysis is flawed for various reasons. For example, by mingling wireless demand with wireline demand, US Telecom depicts a misleading view of ILECs' market power in local voice markets. Furthermore, by failing to acknowledge that VoIP-based offerings, which, in the vast majority of instances, are offered as part of a bundle, are not economic substitutes for stand-alone basic local service, US Telecom also erroneously characterizes the local telecommunications market structure that exists today. Contrary to USTelecom's assertion, consumers have yet to experience a "vibrantly competitive market"²⁷ and they are not yet protected by "a robust choice of services from a variety of competing

²⁴ USTelecom Petition, at 11-12, 15-16.

²⁵ *Id.*, at 12.

²⁶ *Id.*, at 14. USTelecom's "competitive analysis" and supporting data is contained in Appendix B of its Petition, which is ten pages in length and contains national statistics regarding wireless and cable telephony, for the most part.

²⁷ *Id.*, at 4.

providers.”²⁸ USTelecom’s competitive analysis includes generalities, and therefore should be afforded minimal weight by the FCC.²⁹

B. USTelecom exaggerates the role of wireless service in disciplining the rates, terms, and conditions of basic local exchange service.

Consumer Advocates acknowledge that the quantity of “cord-cutters” (consumers who have abandoned their wireline service in favor of wireless) has increased in recent years, but USTelecom’s reliance on this development in support of its claims of competition is excessive. The fact that, in the first six months of 2011,³⁰ 31.6% of American homes had only wireless service is not disputed.³¹ However, USTelecom exaggerates the significance of this statistic. In fact, almost 70% of American households had wireline service — market dominance by most traditional measures. It is also important to note, for example, that wireless-only households have certain distinct characteristics. For example, a report released by the CDC, based on the National Health Interview Survey, states: “The percentage of adults living in households with only wireless telephones decreased as age increased beyond 35 years: 34.3% for adults aged 35-

²⁸ *Id.*, at 9.

²⁹ See e.g., *id.*, Appendix B, at 3, stating among other things: “According to USTelecom’s analysis, as of the first half of 2010, the percentage of households that used an alternative to an ILEC for telephone service varied by state from a low of approximately 30 percent to a high of 60 percent.” USTelecom fails, however, to provide the empirical state-by-state and company-by-company analysis related to its assertion. US Telecom cites in footnote 11 of its Appendix B to a USTelecom Research Brief. <http://www.ustelecom.org/Leam/ReportsandStudies/Industry-Stats>. See also, a January 15, 2012 research brief by the same author. <http://www.ustelecom.org/sites/default/files/documents/010512-ResearchBrief-Competition-Research-Brief-Final.pdf> The two USTelecom reports fail to provide the underlying workpapers, and among other things, it is unclear how the research addresses Verizon’s FiOS digital voice lines, which should be included in any analysis of statewide market developments. <http://www22.verizon.com/home/phone/fiosdigitalvoice/lines>. Furthermore, the research reports underscore the fact that the level of competition varies significantly among geographic markets (examined at a state-wide level), and likely varies even more when examined at the level of individual companies’ operating territories. This variety underscores that it is misguided to consider USTelecom’s sweeping Petition, which fails to provide company-specific market analysis.

³⁰ The Center for Disease Control and Prevention’s (“CDC”) National Center for Health Statistics survey was undertaken between January and June 2011.

³¹ Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, Center for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2011*, released December 21, 2011 (“CDC Wireless Substitution”), available at: <http://www.cdc.gov/nchs/nhis.htm>.

44 years; 21.6% for adults aged 45-64 years; and 7.9% for adults aged 65 years and over.”³²

These data show that elderly consumers rarely view wireless service as an economic substitute for wireline service (they may own wireless service, but they use wireless service *in addition to* rather than *instead of* wireline service). Further, homes with infants and small children may choose to retain wireline service in order to reach 9-1-1 and emergency services more reliably than they could with wireless service.³³ Also, consumers in rural areas where wireless service may be less reliable than it is in urban areas may be less likely to cut the wireline cord. And even viewing statistics for the entire population, for the vast majority of households, wireless is not an economic substitute for wireline service.

The United States Department of Justice (“DOJ”) has similarly concluded that wireless and wireline services are in different product markets. In its complaint regarding AT&T’s proposed acquisition of T-Mobile, the DOJ stated, among other things: “Because neither fixed wireless services nor wireline services are mobile, they are not regarded by consumers of mobile wireless telecommunications services as reasonable substitutes.”³⁴ The DOJ also concluded that “[m]obile wireless telecommunications services accordingly is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. § 18.”³⁵

Furthermore, the Commission has recognized that wireless service is not a true competitive alternative to wireline service because it is not as reliable in rural areas as wireline service is. The Commission recently stated:

³² *Id.*, at 2.

³³ Adults with children are less likely to be cord-cutters than adults living alone or in a group situation. *Id.*, at 9, Table 2.

³⁴ *United States of America v. AT&T, Inc. and T-Mobile USA, Inc., and Deutsche Telekom AG*, Complaint, Case No. 1:11-cv-01560, (filed Aug. 31, 2011), at para. 12.

³⁵ *Id.*

Likewise, while 4G mobile broadband services may meet our speed requirements in many locations, meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors.¹⁷¹ And because the performance offered by mobile services varies by location, it would be very difficult and costly for a CAF recipient or the Commission to evaluate whether such a service met our performance requirements at all homes and businesses within a study area, census block, or other required area.³⁶

Last year, the California Public Utilities Commission issued a proposed decision in which it made, among others, the following observations and findings regarding wireless service, which further underscores the differing wireless and wireline markets:³⁷

- Although communications technologies and regulatory rules have evolved since 1996, consumers are still entitled to basic service elements essential for their participation in society.³⁸
- Based on the growing use of wireless or broadband technologies, various carriers thus argue that existing basic service standards should no longer be required nor imposed. Verizon, for example, points to the diversity of products offered by wireless service in addition to mobility, including voice mail, texting and smart phones that provide broadband connectivity allowing music, video and other valued applications.

Verizon's recitation, however, blurs relevant distinctions between basic essentials and more diverse service options. We recognize that modern communication preferences and expectations among consumers reflect a diverse spectrum. The growing demand for this broader diversity of communications services is separate and distinct from the continuing need for essential basic service elements upon which a significant sector of consumers rely. The growing demand for music and video communications does not eliminate the need for basic service elements among those who rely upon them.³⁹

- Likewise, the statistics showing increasing numbers of customers migrating toward wireless service does not negate the importance of existing basic service features for the majority of consumers. The relevant data source for identifying basic service needs is the 95% share of residential market penetration that represents the Commission's universal

³⁶ *CAF Order and FNPRM*, at para. 104, cite omitted.

³⁷ California Public Utilities Commission, Rulemaking 09-06-019, Order Instituting Rulemaking Regarding Revisions to the California High Cost Fund B Program (filed June 18, 2009), Revised Proposed Decision of President Peevey, Mailed 2/10/2012.

³⁸ *Id.*, at 11.

³⁹ *Id.*, at 12-13.

service goal. By contrast, less than 50% of California consumers have chosen to discontinue wireline service. While a growing number of consumers may be willing to give up some basic service elements in favor of wireless, this minority does not determine the preferences or needs of customers that continue to rely upon basic service.⁴⁰

- These statistics signify that while a majority of the consuming public utilizes wireless communications, most wireless customers still concurrently subscribe to wireline basic service. Consequently, these statistics indicate that most customers still value features currently available through wireline basic service that may not be otherwise available through their wireless service plan. Accordingly, while these statistics indicate a growing use of wireless, wireless service —without wireline at least as a back up-- is still not meeting most consumers' basic calling needs. The protections offered by existing basic service thus remain essential in meeting universal service goals.⁴¹
- While the Wireless and other alternative offerings are configured differently from basic service, those offerings currently serve as partial, but not complete, substitutes for basic service for many customers.⁴²
- Although a growing percentage of customers subscribe to wireless or VoIP service for certain communications needs, a majority of customers continue to subscribe to basic wireline service, either alone or in combination with wireless service.⁴³
- While some customers have discontinued wireline service in favor of other communications services, the needs and preferences of that minority of customers do not represent the needs and preferences of the majority of customers that continue to subscribe to basic wireline service.⁴⁴

The FCC similarly should afford limited weight to the presence of wireless service as a competitive alternative to wireline service.

C. The undeniable entry by cable companies into telecommunications markets has led to, at best, a duopoly, which does not represent effective competition, and, also, cable companies do not offer economic substitutes for stand-alone basic local service.

⁴⁰ *Id.*, at 13.

⁴¹ *Id.*, at 14-15.

⁴² *Id.*, at 51, Proposed Finding of Fact 8.

⁴³ *Id.*, Proposed Finding of Fact 9.

⁴⁴ *Id.*, at 52, Proposed Finding of Fact 11.

Cable companies have made inroads into ILECs' local exchange service offerings, and indeed, have emerged as the strongest wireline alternatives to ILECs, with their VoIP service. However, the vast majority of the non-ILEC interconnected VoIP subscriptions are provided as a part of a bundle with cable modem broadband service,⁴⁵ and therefore are not economic substitutes for stand-alone basic local service. This characteristic of markets demonstrates that even the minimal competition that the cable-telecommunications duopoly provides is limited to those customers who seek a "double play" (consisting of voice and broadband access to the Internet) or "triple play" offering (consisting of voice, broadband access to the Internet and video service).⁴⁶

Moreover, the duopoly that exists between ILECs and cable companies for that portion of households that seek packages does not provide effective competition, as is underscored by the cross-marketing agreements recently entered into between Verizon and cable companies. Comcast, Time Warner, and Bright House have entered into commercial agreements with Verizon Wireless under which the companies "will sell each other's services on a market-standard commission basis, with the new subscribers becoming customers of the other service provider (i.e., wireless customers signed up by the cable companies would become customers of Verizon Wireless, and cable companies signed up by Verizon Wireless would become customers of the cable companies)."⁴⁷ Cox and Verizon Wireless have entered into similar independent

⁴⁵Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2010*, rel. October 2011 ("FCC Local Comp Report"), at Table 9.

⁴⁶ As shown in the FCC's Local Competition Report, one cannot determine whether the VoIP is being purchased as part of a double play or triple play package, but, because cable companies are the primary provider of VoIP, it is likely that many of the packages are triple play.

⁴⁷ *In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses*, WT Docket No. 12-4, Verizon Wireless/SpectrumCo Public Interest Statement, at 23-24.

separate commercial agreements.⁴⁸ Although “[t]hese types of agency relationships” may be “nothing new,”⁴⁹ the scale and scope of the intended collaboration is something new and potentially harmful to the prospects for competition. The potential benefits to the companies are clear, but instead of competition, the industry would have collaboration, which could lead to collusion and higher prices for consumers.

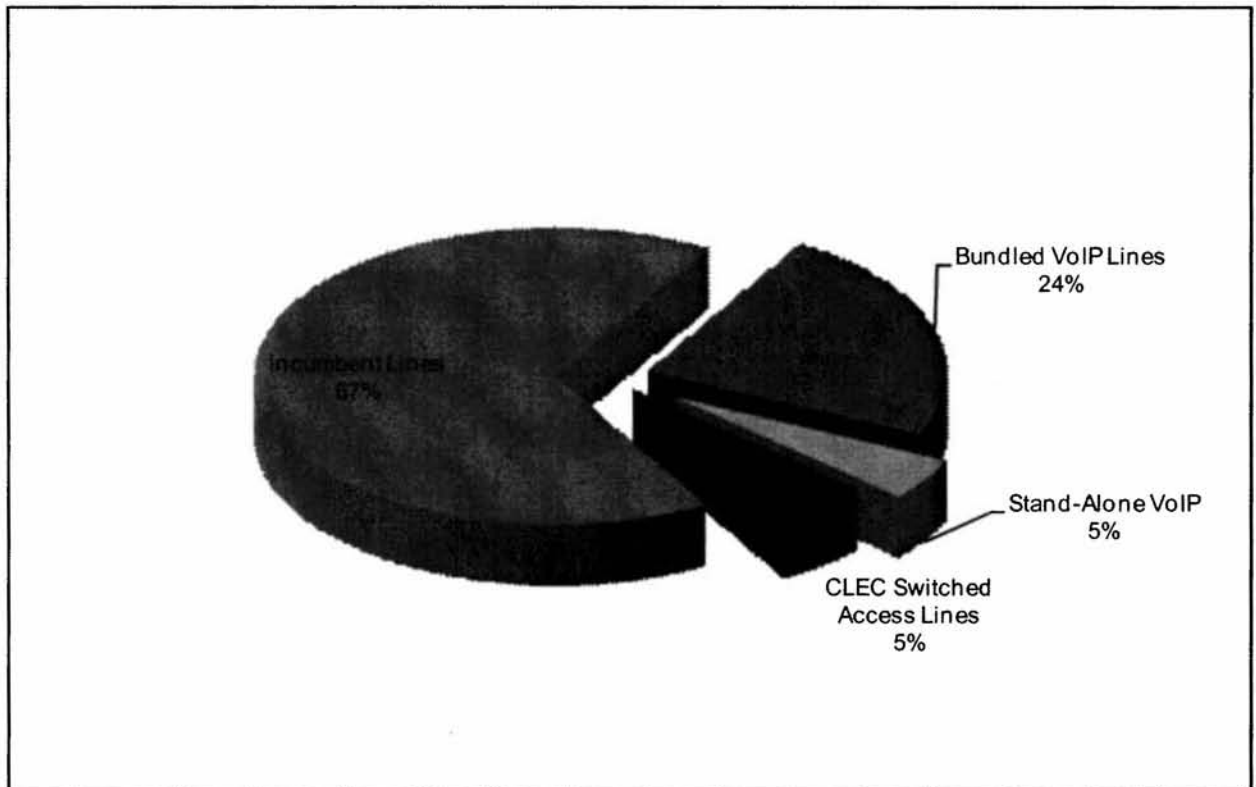
Furthermore, even when they are offered on a voice-only basis, unlike ILECs’ standalone basic local exchange services, the cable companies’ offerings include intrastate and interstate long distance (toll) calling, and are designed to appeal to a discrete market comprised of customers that want – and are willing and able to pay more for – a bundle that consists of both local and long distance services. Figure 1 below demonstrates the dominance of the incumbent carriers’ services and cable bundle packages in the residential wireline market, and demonstrates the lack of effective substitutes for standalone voice service.

⁴⁸ *Id.*, Verizon Wireless/Cox Public Interest Statement, at 20.

⁴⁹ *Id.*, Verizon Wireless/SpectrumCo Public Interest Statement, at footnote 70.

Figure 1⁵⁰

**Residential Wireline Market
as of December 31, 2010**



USTelecom has failed to demonstrate that effective competition exists in relevant geographic and product markets. In the absence of competition, regulators require access to comprehensive, uniform data and reports in order to exercise effective oversight over companies with market power.⁵¹ Therefore, the FCC should deny USTelecom's Petition.

⁵⁰ Source: FCC Local Comp Report, Table 9. The bundled VoIP lines include "double play" and "triple play" packages."

⁵¹ 47 U.S.C. § 160(a)(1).

V. RELEVANCE OF REPORTS AND REGULATIONS TO FEDERAL AND STATE REGULATORY OVERSIGHT

A. Background

USTelecom argues that the Commission's own initiative to eliminate unnecessary regulations supports the grant of forbearance and that many of the rules were only relevant to universal service and intercarrier compensation, which have now been reformed.⁵²

USTelecom's arguments are not persuasive, for reasons Consumer Advocates discuss below.

B. Evidence of relevance of reports

1. USTelecom has failed to demonstrate that the reports are irrelevant.

Consumer Advocates address some but not all of the seventeen reports for which USTelecom seeks forbearance. Silence regarding a particular report does not connote that Consumer Advocates support forbearance. The overarching flaws in the Petition (lack of company-specific evidence, flawed analysis of the level of competition in relevant markets, etc.) mean that the FCC need not assess the substantive merits of the Petition as it relates to each individual report. Nonetheless, Consumer Advocates provide some examples of the value of certain reports to the ability — shared by Consumer Advocates and federal and state regulators — to protect consumers from improper subsidization of competitive services; to detect and to prevent unreasonable rates, terms and conditions; to undertake a fact-based assessment of the need, if any for universal service funds; and to ensure adequate service quality.

Federal and state regulators already confront an information asymmetry — the carriers that they regulate possess far more information about their operations, costs, and revenues than do the regulators and the advocates who represent consumers' interests. Consumer Advocates do not deny that the industry is undergoing technological change, but information continues to be

⁵² USTelecom Petition, at iii.

essential to ensure that, as the industry migrates from one form of technology to another, and as industry concentration continues, consumers are protected from market power. In the absence of effective competition, regulators and consumer advocates require continuing access to data. Furthermore, so long as the industry continues to rely on state and federal universal service and broadband support, which consumers ultimately fund, it is essential and important that industry be held accountable for the use of such public funds. Until such time as incumbent local exchange carriers no longer seek nor require public funds to deploy affordable voice and broadband services, it would be premature and ill-advised to discontinue reporting requirements.⁵³ Furthermore, regulators require data about carriers' operations and costs to ensure that incumbent carriers offer access to essential network elements to their rivals at reasonable rates, terms, and conditions.

Consistent and uniform reports are essential tools for diverse regulatory purposes. Part 32 (cost accounting), Part 36 (separations), and Part 64 (regulated versus unregulated) cost accounting and cost assignment rules provide critical information for federal and state regulators. Cost accounting rules guide carriers' assignment and allocation of common costs and revenues by the categories of costs, whether the service is regulated or non-regulated, by jurisdiction, and by category. USTelecom indicates that the Commission, by having granted forbearance from the cost assignment rules to AT&T, Verizon, and Qwest, has already determined that forbearance satisfies the three-prong test and also has "invited similarly situated LECs 'to seek comparable forbearance relief.'"⁵⁴ Yet NASUCA appealed these orders; that appeal is being held in abeyance pending action on reconsiderations.⁵⁵

⁵³ Which is not to say that **lack** of receipt of these funds should excuse carriers from the reporting requirements.

⁵⁴ USTelecom Petition, at 32, citing *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd., at 7307, para. 16.

⁵⁵ See, e.g., *Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules (including Verizon/Qwest Petitions for cost allocation forbearance)*,

Section 254(k) of the 1996 Act establishes a responsibility for the FCC and the states to ensure that universal service bears no more than a reasonable share of the joint and common costs of facilities used to provide those services, and states:

The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.⁵⁶

States must analyze incumbents' cost accounting to fulfill their responsibility as set forth in the 1996 Act. Furthermore, states require access to detailed and uniform cost data in order to assess the reasonableness of rates for ILECs' unbundled network elements as well as their resale discounts. Effective competition depends on rivals' ability to obtain access to essential wholesale facilities at economically efficient, cost-based rates.

2. Rules governing notices of network changes and service discontinuance approval requirements.

USTelecom seeks forbearance from the FCC's rules governing notice of network changes "only when notice is provided via a carrier's publicly-accessible Internet site."⁵⁷ Internet notice is inadequate because not all households have access to the Internet, and, furthermore the cost of obtaining access to the Internet is a barrier for many households. The FCC serves as a central repository for this information.

USTelecom also seeks forbearance of the FCC's service discontinuance approval requirements "only where a carrier makes available IP broadband services and, as a result of such availability, seeks to discontinue a preexisting service offering that relies on other

Memorandum Opinion and Order, 23 FCC Rcd. 7302 (2008), *pet. for recon. Pending, pet. for review pending, NASUCA and the New Jersey Division of Rate Counsel v. FCC*, Case Nos. 08-1226 and 08-1353 (D.C. Cir., filed June 23, 2008).

⁵⁶ 47 U.S.C. § 254(k).

⁵⁷ USTelecom Petition, at A-11.

technology.”⁵⁸ USTelecom has failed to demonstrate that its proposed elimination of service discontinuance requirements is in the public interest. For example, a carrier’s IP-based offering may be priced at a higher monthly or nonrecurring rate, may require a long-term commitment, or may require consumers to purchase a package rather than a stand-alone voice service. Therefore, carriers should not be able to sidestep the discontinuance approval requirements. USTelecom has not met its burden of proof and its request should be denied.

3. Prepaid calling card reporting requirements

USTelecom has failed to demonstrate that it would be in the public interest for the FCC to forbear from its prepaid calling requirements.⁵⁹ Contrary to USTelecom’s assertion that the prepaid calling card market is “fiercely competitive,”⁶⁰ and “functioning properly,”⁶¹ the market instead shows evidence of market failure as the investigation by the Federal Trade Commission into phone card scams illustrates.⁶²

4. States rely on the reports that would be discontinued if the FCC granted USTelecom’s Petition.

States rely on the information that USTelecom proposes to discontinue reporting to the FCC in diverse regulatory proceedings encompassing such matters as universal service funds, broadband funds, intrastate switched access charge proceedings, service quality proceedings, and alternative form of regulation (“AFOR”) proceedings. The ARMIS 43-01 Annual Summary Report “collects highly aggregated financial data reflecting the results of accounting, rate base,

⁵⁸ *Id.*, at A-11.

⁵⁹ *Id.*, at 72-73.

⁶⁰ *Id.*, at 72.

⁶¹ *Id.*

⁶² “FTC: Prepaid Phone Card Marketers Will Pay \$2M For Lying To Customers,” Mandi Woodruff, *Business Insider*, February 01, 2012, http://articles.businessinsider.com/2012-02-01/news/31011953_1_millennium-telec-card-tax-scam-ftc.

and cost allocation requirements prescribed in Parts 32, 64, 65, 36 and 69, of the FCC Rules,” and is filed on a study area (jurisdiction) basis.⁶³ The FCC Report 43-01 lists revenue, revenue requirement, and demand data, which must be provided annually by study area.⁶⁴ Annual financial snapshots of ILECs’ operations provide relevant information to state and federal regulators, which are responsible for oversight of these companies.⁶⁵ The elimination of uniform cost accounting systems would be adverse to the public interest and would hamper regulators’ ability to fulfill their responsibility to ensure just and reasonable rates, terms and conditions, and to prevent improper cross-subsidization of unregulated services by regulated ones.

In the context of service quality investigations, ILECs have raised concerns about their ability to invest in and to maintain properly their networks because of purportedly underpriced basic local exchange service, and purported failure to earn sufficient return on their investment.⁶⁶ State consumer advocates and regulators rely on cost data that is based on the USOA Part 32 accounts to assess the plausibility of such arguments, and also rely on cost accounting relating to the assignment and allocation of costs between regulated and nonregulated services offered over a common network.

In the context of investigations of intrastate switched access charges, state consumer advocates and regulators are often confronted with ILECs’ assertions that they need to raise basic

⁶³ <http://transition.fcc.gov/web/armis/instructions/>.

⁶⁴ <http://transition.fcc.gov/web/armis/instructions/2009/4301general.htm>.

⁶⁵ See e.g., *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Affidavit of Susan M. Baldwin, on behalf of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, filed August 22, 2006. Table 1, Table 4, Tables 5-9, paras. 111-118.

⁶⁶ See, e.g., *In re Verizon Service Quality in Western Massachusetts*, Massachusetts Department of Telecommunications and Cable D.T.C. 09-1.

local rates in order to offset “foregone” intrastate switched access revenues.⁶⁷ In order to assess the need, if any, for such proposed increases to local rates, states require access to cost accounting data. Consumer Advocates recognize that the FCC recently asserted jurisdiction over intrastate switched access charges, but this improper FCC preemption of state ratemaking authority is presently under appeal.⁶⁸ Furthermore, even if the FCC’s efforts to set intrastate switched access rates were found to be legal, state regulators will still be confronted by ILECs’ requests to raise local rates in order to offset lower (intrastate or interstate) switched access charges.

In Maine, a 2005 court decision provides further evidence of the need for cost studies, even when carriers are governed by an AFOR. The Maine Supreme Judicial Court remanded a Public Utilities Commission decision adopting a new AFOR because the “Commission failed to undertake even a cursory comparison of the local rates that would be set under an ordinary ROR proceeding” to the rates that would result from the AFOR plan, as required by the legislature.⁶⁹

⁶⁷ See, e.g., *In the Matter of the Board’s Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, New Jersey Board of Public Utilities Docket No. TX08090830. See also Massachusetts Department of Telecommunications and Energy DTE 01-31 Phase II. Verizon MA raised its residential dial-tone line rate by \$2.44 per month in order to “offset” the projected revenue loss resulting from a reduction in intrastate switched access charges. DTE 01-31 Phase II, at 86-87. Verizon MA’s intrastate switched access rates were lowered to interstate levels as part of its alternative regulation plan adopted in DTE 01-31 in 2003.

⁶⁸ *In re: FCC 11-161* as No. 11-9900 (10th Cir.).

⁶⁹ *Office of Public Advocate, et al. v. Pub. Utils Comm’n.*, 866 A.2d 851 (2005), at para. 9. The decision also addressed the Maine PUC’s incorporation of a local rate increase to offset decreases in Verizon’s access charges. *Id.*, at para. 39-43, fn 8. Verizon’s assignment and allocation of costs are among the issues presently under investigation by the Maine Public Utilities Commission as a result of the Court’s remand. *Investigation into New Alternative Form of Regulation for Verizon Maine Pursuant to 35-A M.R.S.A. § 9102-9103*, Maine Public Utilities Commission, Docket No. 2005-155.

States' investigation of the need for and size of state universal service funds also rely on information that carriers report as a result of the Part 32 and Part 36 accounting rules.⁷⁰ Thus the accounting rules remain necessary.

The FCC requires access to uniform, comprehensive cost accounting data.

The FCC also requires access to uniform, comprehensive cost accounting data. For example, as part of its "Phase II" distribution of broadband subsidies, the FCC intends to adopt a broadband cost model by the end of 2012, and will use this cost model, in combination with competitive bidding, to determine how to distribute broadband subsidies. The FCC stated: "We anticipate that the Wireline Competition Bureau will adopt the specific model to be used for purposes of estimating support amounts in price cap areas by the end of 2012 for purposes of providing support beginning January 1, 2013."⁷¹ In order to assess the reasonableness of proposed broadband cost models, the FCC needs to require all companies to submit data using the same guidelines, and the only consistent standards that can accomplish this function are the Part 32 rules.

Also, with regard to federal universal service mechanisms, the current high cost loop support ("HCLS") and Interstate Common Line Support ("ICLS) rely on information and accounting based on Part 32 and Part 36 rules. Clearly it would be counter to the public interest to grant USTelecom's Petition for forbearance from the very reports upon which the FCC relies in order to achieve its broadband and universal service policies and to implement related programs.

⁷⁰ See, e.g., *In the Matter of the Commission, on its own motion, seeking to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act beginning July 1, 1999*; Chapter 288 – Maine Universal Service Fund; <http://www.mainelegislature.org/legis/statutes/35-a/title35-Asec7104.html>

⁷¹ *CAF Order and FNPRM*, at para. 192.

5. Price cap regulation does not render reporting irrelevant.

USTelecom contends that these “legacy” regulations are unrelated to whether “a carrier’s interstate rates or practices are just, reasonable, and nondiscriminatory, particularly for those carriers operating under price cap regulation.”⁷² Consumer Advocates previously demonstrated that ARMIS reporting continues to be necessary under price cap regulation in their comments opposing Qwest’s petition for forbearance.⁷³ Among other examples, Consumer Advocates pointed to the Commission’s “Special Access” proceeding, where “even under price caps, ILECs are able to extract monopoly rents from consumers and competitors that rely on special access service.”⁷⁴ ARMIS reporting is a key tool for regulators to determine where markets fail, as in the special access market.

Regardless of whether a carrier is subject to alternative or traditional rate of return regulation, regulators require meaningful cost accounting data in order to ensure that regulated rates are just and reasonable. Establishing just and reasonable going-in rates, and assessing the impact of exogenous events (such as changes in separations and other cost accounting rules) on price cap and alternative regulation plans requires an assessment of a carrier’s revenue requirement: If ILECs assign and allocate excess amounts to the intrastate jurisdiction, then state rates will be too high. Another limitation of price cap plans is that ILECs have an economic

⁷² USTelecom Petition, at 8. *See also, id.*, at 11, 32.

⁷³ 07-204, Joint Comments And Opposition Of The New Jersey Division Of Rate Counsel, Public Counsel Section Of The Washington State Attorney General’s Office And The National Association Of State Utility Consumer Advocates, filed December 6, 2007; at 37-39.

⁷⁴ *Id.*, at 38. *See also In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No.05-25, RM-10593, Comments of the New Jersey Division of the Ratepayer Advocate, June 13, 2005; *id.*, Reply Comments of the New Jersey Division of the Ratepayer Advocate, July 29, 2005; and *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No.05-25; RM-10593, Comments of the New Jersey Division of Rate Counsel, August 8, 2007; *id.*, Reply Comments of the New Jersey Division of Rate Counsel, August 15, 2007.

incentive to bring exogenous events that *raise* their costs to the attention of regulators but lack a corresponding incentive to alert regulators to exogenous events that *lower* their regulated costs. This is evidenced by the 2005 order approving AT&T's request for exogenous treatment of local number portability ("LNP") costs.⁷⁵ If price cap regulation worked efficiently, major exogenous events such as jurisdictional and regulatory shifts in the treatment of VoIP, ISP-bound traffic, and DSL should lead to a decline in rates under price caps. Federal and state rates, set by price caps, require re-initialization to address these major exogenous events.

Competitive forces that constrain ILECs' market power do not yet exist. Also, even in competitive markets, firms track costs. US Telecom's contention that competition adequately constrains carriers' market power, rendering cost allocation rules obsolete, is not persuasive because competition does not yet constrain their regulated services, and, indeed, likely does not yet constrain many of their unregulated services.

Furthermore, rational suppliers rely on cost data to support strategic development and pricing. In a competitive market, suppliers typically track costs to support strategic marketing, sales, and development: Those products that show little promise of covering their costs may be abandoned and those products for which key variables (such as consumer demand and revenues) are favorable relative to the associated costs will be pursued more actively.⁷⁶ Even a monopolist seeks information about average and marginal costs in order to maximize profits. As one economics textbook states, "a profit-maximizing monopolist produces that quantity for which

⁷⁵*In the Matter of Petition of AT&T Inc. for Waiver of the Commission's Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 61.45(d)*, FCC CC Docket No. 95-116, *Order*, July 10, 2006.

⁷⁶Of course, if a supplier in a competitive market decides affirmatively to cross-subsidize its products (for example, by setting a low price for a digital camera and a high price for printing digital photos), there are no adverse implications for consumers, competitors, and the industry structure. By contrast, in telecommunications markets, ILECs' supply of competitive and noncompetitive products creates specific concerns, for which regulators require cost accounting data.

marginal revenue is equal to marginal cost.”⁷⁷ Also, “[a]lthough a monopoly may earn positive profits in the long run, the size of such profits will depend on the relationship between the monopolist’s average costs and the demand for its product.”⁷⁸

The complexity of assigning and allocating costs does not mean that industries in competitive markets are ignorant or inconsiderate of such costs. Furthermore, regulators’ need for data outweigh any purported burden to carriers of maintaining data in standardized formats.

The explanation of legacy AT&T⁷⁹ of the need for regulatory accounting and reporting applies even more in this era of industry consolidation and concentration than when, as a competitive local exchange carrier (“CLEC”), it competed with the ILECs:

Regulatory accounting and reporting requirements are more important today than ever before. New technologies and deregulation have allowed incumbent LECs increasingly to enter competitive markets – e.g., long-distance, wireless and broadband markets – creating additional opportunities for incumbents to abuse their control over the bottleneck local facilities that are necessary inputs in those other markets. And it is only through detailed and strictly enforced accounting and reporting requirements, accompanied by rigorous audits, that the Commission and state regulators can enforce prohibitions against anticompetitive abuses of market power.⁸⁰

The stated position was valid then and continues to be valid, despite the increasing concentration of the industry.

⁷⁷ Walter Nicholason, *Microeconomic Theory, Basic Principles and Extensions*, Seventh Edition, 1998, at 548.

⁷⁸ *Id.*, at 550, citation omitted.

⁷⁹ The Commission approved SBC’s acquisition of legacy AT&T and Verizon’s acquisition of MCI. *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-65, *Memorandum Opinion and Order*, Rel. November 17, 2005 (“SBC/AT&T Merger Order”); *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-75, *Memorandum Opinion and Order*, Rel. November 17, 2005 (“Verizon/MCI Merger Order”).

⁸⁰ *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II*, CC Docket No. 00-199, *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Comments of AT&T Corp., January 30, 2004, at 5.

6. Basic and Continuing Property Requirements

USTelecom seeks forbearance from basic and continuing property record requirements.⁸¹ According to FCC rules, “The telecommunications plant accounts (2001 to 2007 inclusive) are designed to show the investment in the company’s tangible and intangible telecommunications plant which ordinarily has a service life of more than one year, including such plant whether used by the company or others in providing telecommunications service.”⁸²

In an earlier order regarding an investigation into continuing property record audits of certain ILECs, the FCC stated:

Finally, while we decline here to further pursue investigation in the CPR audits with regard to whether the CPRs reflected assets that were not purchased or used by the RBOCs in accordance with our rules, we remain concerned about the poor record keeping that these audits revealed. ... Accordingly, we direct the Common Carrier Bureau to work with the RBOCs to evaluate and improve the accuracy of their property records and accounts to ensure compliance with our requirements going forward.⁸³

Consumer Advocates are unable, based on any publicly available documentation, to conclude that such efforts occurred and whether the accuracy of property records has improved. Consumer Advocates urge the Commission to deny USTelecom’s petition for forbearance from property record rules.

⁸¹ USTelecom Petition, at A-9.

⁸² 47 C.F.R. 32.2000 (a) (1).

⁸³ *In the Matter of 1998 Biennial Regulatory Review -- Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, *Ameritech Corporation Telephone Companies' Continuing Property Records Audit, et al.*, CC Docket No. 99-117, *GTE Telephone Operating Companies Release of Information Obtained During Joint Audit*, AAD File No. 98-26, Second Report and Order in CC Docket No. 99-137 and Order in CC Docket No. 99-117 and AAD File No. 98-26, FCC 00-396 (rel. November 7, 2000), at para. 13.

VI. CONCLUSION

US Telecom's Petition is procedurally flawed because it seeks forbearance on behalf of an association without providing empirical evidence relating to the operations and markets that correspond with the individual member companies. USTelecom's Petition is also substantively flawed for various reasons. Contrary to the unsubstantiated assertions in the Petition, forbearance will not enhance broadband deployment and competition, but instead, if granted, would severely hamper the ability of the FCC and of states to monitor and further progress toward the achievement of broadband competition, deployment, and affordability. The purportedly "vibrant" competition that purportedly justifies the Petition does not exist at a level to constrain the market power of incumbent local exchange carriers. Moreover, the FCC should clarify unambiguously that states have the authority to require ILECs to submit any and all of the seventeen reports that the Petition addresses.

Furthermore, regulators' need for information outweighs any purported burden to carriers of providing such data. In any event, the FCC should unambiguously clarify that states continue to have the authority to require ILECs to submit any of the reports that the Petition encompasses. USTelecom has failed to quantify the burden associated with meeting the reporting obligations from which it seeks forbearance, and similarly has failed to quantify the purported savings associated with the granting of its Petition. Above all, US Telecom has failed to show how the Petition would benefit consumers. USTelecom has failed to meet its burden of proof, and, therefore, the FCC should deny the Petition.

Respectfully submitted,

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April 9, 2012